

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On October 18, 2016 appellant, then a 62-year-old underground mine safety and health inspector, filed a traumatic injury claim (Form CA-1) alleging that on October 13, 2016 he injured his neck when he slipped and fell onto a mine floor while in the performance of duty. OWCP accepted the claim for strain of muscle(s) and tendon(s) of the right shoulder rotator cuff (tear) and later expanded the acceptance of the claim to include aggravation of radiculopathy and spinal stenosis of the cervical region. It paid appellant wage-loss compensation on the supplemental rolls, effective November 17, 2016, and then on the periodic rolls effective September 17, 2017.

In a September 27, 2017 letter, OWCP outlined appellant's entitlement to compensation benefits. It advised him that it was making deductions for health insurance benefits, basic life insurance (BLI), and OLI premiums (in the amount of \$421.20) from his compensation payments every 28 days.

On February 25, 2020 the Office of Personnel Management (OPM) informed OWCP that as a compensation appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of basic, postretirement basic life insurance (PRBLI), and OLI coverage. The final base salary on which FEGLI was based was \$92,316.00. OPM requested OWCP to deduct for code X0 basic Option A for 75 percent reduction and Option B times five with no reduction. It noted that appellant's PRBLI reduction commenced on October 14, 2017. OPM forwarded an Option B election form that appellant signed on February 14, 2020 freezing all of his Option B (additional) life insurance at the value as of age 65, to continue for life.

In a preliminary overpayment determination dated April 9, 2020, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$10,819.00 because OLI and PRBLI premiums after he reached age 65 had not been properly deducted from his FECA compensation for the period October 14, 2017 through February 29, 2020. It provided an overpayment calculation. OWCP further advised appellant of its preliminary determination that he was not at fault in the creation of the overpayment and requested that he complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). Additionally, it notified him that within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In a memorandum of telephone call (Form CA-110) dated April 30, 2020, appellant informed OWCP that OPM had advised him that he had paid BLI and OLI premiums up to age 65. However, deductions should have continued to have been made as of 2019 when he turned 65 years old and not in 2017 as indicated in OPM's February 25, 2020 letter.

In a May 11, 2020 amended overpayment referral, OWCP noted that its compensation history records showed that appellant had paid OLI premiums up to May 25, 2019 and that deductions for OLI and PRBLI premiums began on March 1, 2020. It further noted that the overpayment occurred from May 26, 2019 to February 29, 2020, 10 periodic roll cycles. As appellant's premium for OLI after age 65 was \$502.20 every 28-day cycle, the total overpayment was \$5,022.00.

OWCP, in a corrected preliminary overpayment determination also dated May 11, 2020, informed appellant that he had received an overpayment of compensation in the amount of \$5,022.00 because OLI premiums had not been properly deducted after he turned 65 years old on May 12, 2019 from his FECA compensation for the period May 26, 2019 through February 29, 2020. It provided an overpayment calculation. OWCP again found that appellant was not at fault in the creation of the overpayment and requested that he complete an overpayment action request form containing appeal rights and a Form OWCP-20 and submit supporting documentation including copies of tax returns, bank account statements, bills and cancelled checks, pay slips, and other records which supported the income and expenses listed. It again notified him that he could request a telephone conference, a final decision based on the written evidence, or a prerecouplement hearing. OWCP advised that, under 20 C.F.R. § 10.438, failure to submit the requested information within 30 days would result in a denial of waiver of recovery of the overpayment. However, no financial information was submitted by appellant.

On June 8, 2020 appellant requested a telephonic prerecouplement hearing, which was held on August 31, 2020. He contested the fact and amount of the overpayment and requested waiver of recovery of the overpayment. Appellant asserted that he was subject to double jeopardy as OWCP had vacated the initial preliminary overpayment determination, admitted error, but had thereafter issued a new preliminary overpayment determination. He also indicated that he had alerted OWCP that premiums were not being withheld properly from his FECA compensation.

By decision dated November 16, 2020, an OWCP hearing representative finalized the May 11, 2020 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$5,022.00 for the period May 26, 2019 through February 29, 2020, for which he was without fault, because OWCP had failed to deduct OLI premiums after he reached age 65 from his compensation payments. He found that issuance of a corrected decision, reducing the amount of the overpayment, did not constitute double jeopardy. The hearing representative noted the rates of FEGLI premiums effective January 1, 2016. For option B (per \$1,000 of insurance), the bi-weekly premium for age band 65-69 was .54. Based on his rounded final salary of \$93,000.00 and 5x multiple election, appellant was insured for \$465,000.00. The hearing representative further calculated that twice the bi-weekly rate of .54 was 1.08 and multiplied by 465 equaled a 28-day premium of \$502.20. He denied waiver of recovery of the overpayment as no financial evidence had been submitted in response to the May 11, 2020 preliminary overpayment determination, as requested. Because OWCP did not have the necessary financial information to determine an equitable monthly repayment amount, the hearing representative ordered recovery of the overpayment in full within 30 days. Appellant was directed to contact OWCP if he wished to enter into a monthly repayment agreement.

### **LEGAL PRECEDENT -- ISSUE 1**

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.<sup>2</sup> The coverage for BLI is effective unless waived,<sup>3</sup> and premiums for basic and optional life coverage are withheld from the employee's

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<sup>2</sup> 5 U.S.C. § 8702(a).

<sup>3</sup> *Id.* at § 8702(b).

pay.<sup>4</sup> Upon retirement or upon separation from the employing establishment or being placed on the FECA periodic compensation rolls, an employee may choose to continue BLI and OLI coverage in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.<sup>5</sup> BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;<sup>6</sup> however, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.<sup>7</sup>

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his or her compensation, so that his or her life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).<sup>8</sup> When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.<sup>9</sup>

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>10</sup> When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.<sup>11</sup>

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<sup>4</sup> *Id.* at § 8707.

<sup>5</sup> *Id.* at § 8706.

<sup>6</sup> *Id.* at § 8707(b)(2).

<sup>7</sup> *Id.* at § 8706(b)(3)(B). *See J.H.*, Docket No. 20-0281 (issued May 18, 2021); *B.B.*, Docket No. 17-1733 (issued March 26, 2018).

<sup>8</sup> *See I.J.*, Docket No. 19-1672 (issued March 10, 2020); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

<sup>9</sup> 5 U.S.C. § 8707(d); *see also B.B.*, *supra* note 7.

<sup>10</sup> *Id.* at § 8102(a).

<sup>11</sup> *Id.* at § 8129(a).

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment of compensation in the amount of \$5,022.00 for the period May 26, 2019 through February 29, 2020, for which he was without fault, because of an underwithholding of OLI premiums from his FECA compensation.

OPM notified OWCP that on February 14, 2020 appellant had elected to freeze all of his Option B additional life insurance at the value as of age 65. OWCP found that appellant had paid OLI premiums up to May 25, 2019 when he reached the age of 65 on May 12, 2019 and that deductions for these premiums began on March 1, 2020, but that it did not deduct the proper amounts of OLI premiums from appellant's wage-loss compensation benefits for the period May 26, 2019 through February 29, 2020. It calculated the amount of the resulting overpayment as \$5,022.00. The record contains compensation payment records, as well as an overpayment worksheet explaining the overpayment calculation and how the overpayment occurred. While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for OLI at whatever option he or she had selected.<sup>12</sup> Moreover, as noted, when an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.<sup>13</sup>

The Board thus finds that OWCP properly determined the fact and amount of the overpayment. As OWCP failed to properly deduct OLI premiums for the period May 26, 2019 through February 29, 2020, appellant received an overpayment of \$5,022.00 during this period.<sup>14</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>15</sup>

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.<sup>16</sup> Additionally, recovery of an

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<sup>12</sup> 5 C.F.R. § 870.504(b); *S.P.*, Docket No. 17-1888 (issued July 18, 2018).

<sup>13</sup> 5 U.S.C. § 8102.

<sup>14</sup> *See J.H.*, *supra* note 7; *I.J.*, *supra* note 8; *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *R.W.*, Docket No. 19-0451 (issued August 7, 2019).

<sup>15</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see A.S.*, Docket No. 17-0606 (issued December 21, 2017).

<sup>16</sup> 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>17</sup>

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>18</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

The fact that a claimant is without fault in the creation of an overpayment does not preclude OWCP from recovering the overpayment.<sup>20</sup> As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>21</sup> Appellant, however, has the responsibility to provide the appropriate financial information and documentation to OWCP.<sup>22</sup>

In its preliminary overpayment determination dated May 11, 2020, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant, however, did not respond. As such, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.<sup>23</sup>

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<sup>17</sup> *Id.* at § 10.437(a)(b).

<sup>18</sup> *Id.* at § 10.438(a).

<sup>19</sup> *Id.* at § 10.438(b).

<sup>20</sup> *See George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

<sup>21</sup> 20 C.F.R. § 10.436.

<sup>22</sup> *Id.* at § 10.438; *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

<sup>23</sup> *J.H.*, *supra* note 7; *D.H.*, *supra* note 14.

As appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>24</sup>

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$5,022.00 for the period May 26, 2019 through February 29, 2020, for which he was without fault, because of an underwithholding of life insurance premiums. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>24</sup> *Id.*